

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NELSON MARTINEZ

Petitioner,

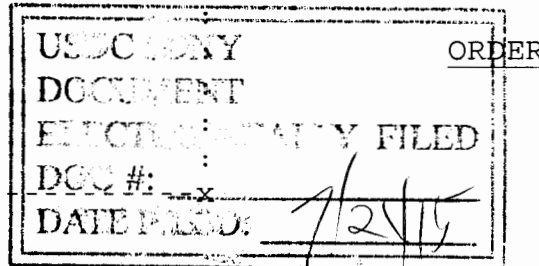
13-cv-9104 (JSR) (RLE)
04-cr-0048 (JSR)

-v-

UNITED STATES OF AMERICA,

Respondent.

JED S. RAKOFF, U.S.D.J.



On May 6, 2015, the Honorable Ronald L. Ellis, United States Magistrate Judge, issued a Report and Recommendation in the above-captioned matter, recommending that the Court deny petitioner Nelson Martinez's motion to vacate, set aside, or correct his sentence in all respects. On June 1, 2015, the Court received petitioner's letter objecting to the Report and Recommendation pro se. Accordingly, the Court has reviewed the Report and Recommendation and the underlying record de novo.

Having done so, the Court finds itself in complete agreement with Magistrate Judge Ellis's Report and Recommendation and hereby adopts its reasoning by reference.¹ Accordingly, the Court denies the motion in all respects, with prejudice. In addition, because petitioner has not made a substantial showing of the denial of a

¹ The Report and Recommendation contains two typographical errors. First, in page 3, "Federal Rule of Criminal Procedure" and "Fed. R. Crim. P. 4(b)" should be "Federal Rules of Appellate Procedure" and "Fed. R. App. P. 4(b)," respectively. Second, in page 4, "ninety-days plus one year past the date his conviction became final" should be "ninety-days plus one year past the date his conviction was affirmed."

constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253. Moreover, the Court certifies that any appeal from this Order would not be taken in good faith, as petitioner's claims lack any arguable basis in law or fact, and therefore permission to proceed in forma pauperis is also denied. See 28 U.S.C. § 1915(a)(3); see also Seimon v. Emigrant Savs. Bank (In re Seimon), 421 F.3d 167, 169 (2d Cir. 2005). Clerk to enter judgment.

SO ORDERED.

Dated: New York, NY
July 23, 2015


JED S. RAKOFF, U.S.D.J.